


**FILED**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

MAR 27 2013

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY  DEPUTY CLERK

PATRICIA JOHNSTON

Plaintiff

v.

S.P. RICHARDS COMPANY

Defendant

CIVIL ACTION NO.  
SA-12-CA-861-OLG

**ORDER**

The Court has considered Defendant's Motion to Strike Plaintiff's Designation of Malinda Gaul, Dr. George E. Tuchsén and Thomas J. Crane as experts (Dkt. # 27). Ms. Gaul and Mr. Crane are not experts that have been specially retained to provide testimony at the time of trial. Should Plaintiff prevail and seek attorney's fees, they may simply submit affidavits on the reasonableness of attorney's fees. Thus, Plaintiff need not comply with the requirements of Fed.R.Civ.P. 26(a)(2)(A) and (B). Dr. Tuchsén is one of Ms. Johnston's treating physicians, and he may or may not testify at the time of trial. Because Dr. Tuchsén has not been retained or specially employed for the purpose of providing expert testimony at the time of trial, Plaintiff need not provide an expert report pursuant to Rule 26(a)(2)(B). Plaintiff's supplemental disclosure complies with Rule 26(a)(2)(C), which pertains to witnesses that are not retained but may nevertheless provide testimony at the time of trial. Defendant may certainly take the deposition of Dr. Tuchsén and request the medical records as part of the discovery in this case.

It is therefore ORDERED that Defendant's Motion to Strike Plaintiff's Designation of Malinda Gaul, Dr. George E. Tuchsén and Thomas J. Crane as experts (Dkt. # 27) is DENIED.

SIGNED this 27 day of March, 2013.

  
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ORLANDO L. GARCIA  
UNITED STATES DISTRICT JUDGE